

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3839 of 1991

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not
?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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VIJAYKUMAR NANUBHAI KANIYA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

Mr.Nilesh Jani for MR MK VAKHARIA for Petitioner(s) :

1,

Mr.Krunal D.Pandya, learned AGP for Respondent(s) : 1

- 3.

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/02/2007

ORAL JUDGMENT

1. By filing this petition under Article 226 of the Constitution of India, petitioner i.e. Shri Vijaykumar Nanubhai Kaniya has prayed, inter alia, to issue a writ of mandamus or any other appropriate direction for quashing and setting aside the action of the respondents in seeking to terminate the services of the petitioner and further, to direct the respondents to regularise the services of the petitioner. Rule was issued by this court on 11-12-1991 and interim relief granted earlier was directed to continue till further orders. No reply has been filed by the respondents.

2. A perusal of the averments made in the writ petition reveals that the petitioner was appointed as Pracharak on temporary basis vide order dated 21-10-1985, annexed as Annexure "A" to the petition. It is the case of the petitioner that since the date of his appointment he is working as Pracharak in the specialized Scheme introduced under the recommendations of the Justice A.R.Baxi Commission,

one of the objectives of which is the upliftment of the economically backward conditions of persons who were classified as Socially and Educationally Backward by the said Commission. It is averred in the petition that the appointment of the petitioner was scrutinised by the Special Recruitment Committee which included the District Employment Exchange Officer, Social Welfare Officer for the State and Social Welfare Officer for the Panchayat. The grievance of the petitioner is that in spite of performing similar work he is not getting the emoluments given to similarly situated employees, who are working under a similar Scheme introduced by the State and further, that the respondents are not taking any steps to regularise the services of the petitioner. According to the petitioner, the respondents have informed him that the Scheme under which he had been employed is likely to be discontinued and his services are likely to be terminated, which has led to the filing of the present petition, seeking the reliefs, which have been mentioned hereinabove.

3. Mr.K.D.Pandya, learned Assistant Government Pleader has submitted that a committee had been

constituted by the Government to look into the pros and cons of the Schemes framed from time to time for the upliftment of the members of the Scheduled Caste and other economically backward classes, vide Notification dated 7-5-2005 and acting upon the recommendations made by the said Committee, the State Government has taken certain decisions which will have a bearing upon the case of the petitioner herein. He has placed on record a Photostat copy of judgment dated 6-10-2005 rendered by this court (Coram: G.S.Singhvi,J, as he then was and A.S.Dave,J) in Letters Patent Appeal No.`1773 of 1999 in Special Civil Application No.4813 of 1995 and other allied matters, which is taken on the record of the case, wherein the said decisions taken by the State Government have been enumerated. The relevant portion of the judgment on page 7 thereof, is relevant and is reproduced hereinbelow:

“In furtherance of the observations made by the Court, the Committee constituted by the State Government vide Notification dated 7.5.2005 considered various issues relating to scheme under which Pracharaks were engaged by the Government and made certain recommendations. After considering the recommendations of the Committee, the State Government has taken the following decisions:

- (1) The Scheme may be continued only to accommodate the existing Pracharaks till such time they are rehabilitated or attain the age of 58 years whichever is earlier. Further, no fresh recruitment of Pracharaks be made under the Scheme.
- (2) In case these Pracharaks are willing to take any financial assistance in the form of loan under the schemes of the various Corporations of this Department, then, their cases may be considered on priority as a special case. Further, such Pracharaks be allowed to receive the honorarium at the existing rate subject to the condition that the amount so received may be used for payment of beneficiaries' contribution for securing loan/ repayment of loan.
- (3) Those Pracharaks who are not willing to take the financial assistance in the form of loan as above, may be considered (given preference) for appointment to Class III services in State Government or Panchayat service in view of their experience as Pracharaks and their upper age limit be relaxed for the above posts provided they possess necessary educational qualifications."

Further, on page-8, the Division Bench of this Court has observed as under:

"In view of the statement made by the learned counsel for the parties, the appeals are

disposed of in the following terms:

(a) The decisions taken by the State Government, which have been reproduced above shall be read as part of this order.

(b) The process of recruitment already initiated for filling up Class III posts in the service of State Government or Panchayats shall be completed, as far as possible, within six months and the Pracharaks be given the benefit in terms of Clause 3 of the decision.

(c) In future recruitments the Pracharaks shall be given the benefit of relaxation in age qualification and their candidature be considered in accordance with the relevant rules provided they possess necessary educational qualification.

While disposing of the appeals in the manner indicated above, we make it clear that if the appellants have any other grievance in relation to their service conditions, then they shall be free to make representation to the competent authority and avail appropriate legal remedy, if any such contingency arises."

4. The case of the petitioner will be governed by the decisions taken by the Committee constituted by the State vide Notification dated 7-5-2005. In the light of the above facts and circumstances, no order need be passed, save and except that the respondents be directed to consider the case of the petitioner in

the light of the decisions made by the Government.

5. The respondents are, therefore, directed to consider the case of the petitioner in the light of the decisions of the State Government regarding Pracharaks dated 7.5.2005, which have been extracted herein-above and in light of the directions given by the Division Bench of this court in Letters Patent Appeal No.`1773 of 1999 in Special Civil Application No.4813 of 1995 and other allied matters, within the shortest possible period and preferably on or before 30-6-2007. Since the petitioner is still in service, the respondents are directed not to terminate his services, except in accordance with law. Rule is made absolute to the above extent. The interim order is vacated. There shall be no orders as to costs.

(Smt.Abhilasha Kumari,J)

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